

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III

SC03-1846

MOTION FOR SUMMARY JUDGMENT
AMENDED FORMAL CHARGE I

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby moves this Honorable Court for Summary Judgment as to the allegations of Amended Formal Charge I, and as grounds states the following:

UNDISPUTED FACTS

1. Amended Formal Charge I references the statement “John Renke, a judge with our values” and contends that it purposefully misrepresents that he was a sitting judge.
2. The full content of the Exhibit A brochure indicates that John Renke was not a sitting judge, as it refers to his practice as an attorney and describes his law practice as a “general and family practice.” It further points out that John Renke was appointed as an attorney in guardianship and incapacity proceedings, which is also inconsistent with any purported representation that he was a sitting judge.

3. John Renke, III, retained John T. Hebert, principal and owner of The Mallard Group, Inc., as his political consultant to discuss and devise election strategies, including the effectiveness and appropriateness of campaign brochures and literature. (See Affidavit of John T. Hebert, attached as Exhibit 1).

4. Based on Mr. Hebert's experience in evaluating voters' support of term limits, he believed that "in many situations, the use of the word "re-elect" or the mention of incumbency is not necessarily a benefit, but rather a detriment." (Exhibit 1). Mr. Hebert never counseled or recommended to John Renke to consider such a ploy as misrepresenting himself as an incumbent. (Exhibit 1). Moreover, Mr. Hebert avers, "John Renke, and his father, John Renke, II, did not write any of the words and at no time suggested or inferred that we should attempt to deceive or mislead anyone." (Exhibit 1).

5. Mr. Hebert was "personally responsible for developing the creative concepts and copy points for the campaign's direct mail voter contact materials." (Exhibit 1). In the opinion of Mr. Hebert, who has a "20-year unblemished professional career" as a campaign consultant, Exhibit A "did not . . . imply or infer that John Renke was an incumbent judge," but rather the "cover headline 'John Renke – a judge with our values' was conceived merely to present to the voter a contrast that Mr. Renke's qualifications and experience were, in our opinion, more in line with their values than his opponent." (Exhibit 1).

6. Other non-incumbent judicial candidates used similar language in their campaign brochures. (See Campaign literature of Robert Bo Michael and Joseph Sowell, attached as Exhibits 2 and 3).

ARGUMENT

The JQC argues that the phrase “John Renke, a judge with our values” could be interpreted to suggest that John Renke was currently a sitting judge. The JQC must prove actual malice to establish that the statement, “a judge with our values,” was misleading and thus violative of Canon 7A(3)(a) and 7A(3)(d)(iii). Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002). To establish actual malice, the JQC must show that John Renke published the statement knowing it was false or that he seriously doubted the truth of the statement. St. Amant v. Thompson, 390 U.S. 727, 731 (1968); Fla. St. Jury Instr. (Civ.) 4.1. The record evidence establishes that the judge and his consultant never intended to convey the impression that he was an incumbent. (Exhibit 1, attached).

In considering whether a phrase is so misleading as to meet the actual malice standard, the entire context of the mailer must be considered. Dockery v. Florida Democratic Party, 799 So. 2d 291, 295 (Fla. 2d DCA 2001). In the full context of the mailer, the phrase is more consistent with the interpretation that Judge Renke would be “a judge with our values” once he was elected. For example, the mailer refers to his general and family practice and his appointment as an attorney in

guardianship and incapacity proceedings. The text of the entire political circular represented John Renke III as an attorney and not as a sitting judge. The JQC cannot meet its burden by extracting one phrase from the mailer and arguing, that out of context, it misrepresents his status. Dockery at 295.

Moreover, depending on the perception of the reader, the statement is susceptible to at least two different interpretations, only one of which is potentially misleading. In considering whether the judge made the statement knowing it to be false, or seriously doubting the truth of the statement, the Hearing Panel should consider other reasonable interpretations of the statement. Given the equal likelihood that the phrase is merely a description of the type of judge the candidate would become and not a suggestion that he is currently a sitting judge, there is a reasonable hypothesis of innocence precluding a guilty finding. See Florida Bar v. Marable, 645 So. 2d 438; Florida Bar v. Fredericks, 731 So. 2d 1249 (requiring The Florida Bar to prove that no reasonable hypothesis of innocence exists in order to establish the specific intent element for a violation of a bar rule involving dishonesty, misrepresentation or deceit). The varying interpretations are inconsistent with a finding that Judge Renke knowingly and purposefully misstated his position.

At worst, the statement is merely negligently misleading because the judge did not consider that the phrase could suggest incumbency. However, negligent

misstatements do not meet the “actual malice” standard necessary to prove a Canon 7A(3)(a) or 7A(3)(d)(iii) violation. Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002); Garrison v. State of Louisiana, 379 U.S. 64, 79 (1964). As such, the JQC cannot prove that Amended Formal Charge I violated Canon 7A(3)(a) and Canon 7A(3)(d)(iii), and this charge should be dismissed.

CONCLUSION

WHEREFORE, Respondent respectfully requests this Honorable Court enter an Order granting Summary Judgment as to Amended Formal Charge I.

Respectfully submitted,

SCOTT K. TOZIAN, ESQUIRE
Florida Bar Number 253510
GWENDOLYN H. HINKLE, ESQUIRE
Florida Bar Number 83062
SMITH, TOZIAN & HINKLE, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602
813-273-0063
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of August, 2005, the original of the foregoing Motion for Summary Judgment has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by regular U.S. Mail to Judge James R. Wolf, Chairman, Hearing Panel,

Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

SCOTT K. TOZIAN, ESQUIRE